of reward to a public officer for additional compensation for services rendered in the performance of his duty cannot be enforced. The cases pronouncing the rule advance as the ground of holding, either one or the other, or both, of these reasons: First, that there is no consideration for the promise, or secondly, that to enforce it would be violative of public policy. Ample authority in Massachusetts may be found declaring the general rule. *Dunham* v. *Stockbridge,* 133 Mass. 233; *Davies* v. *Burns,* 5 Allen 349; *Brophy* v. *Marble,* 118 Mass. 548; *Pool* v. *Boston,* 5 Cush. 219. The states generally follow the rule as stated above. *Somerset Bank* v. *Edmund,* 76 O. S. 396, 81 N. E. 641, 11 L. R. A. (N. S.) 1170; *Marking* v. *Needy,* 71 Ky. (8 Bush.) 22; *Warner* v. *Grace,* 14 Minn. 487; *Ex parte Gore,* 57 Miss. 251; *Riley* v. *Grace,* 17 Ky. Law Rep. 1007, 33 S. W. 207; *Gilmore* v. *Lewis,* 12 Ohio 281; *Stamper* v. *Temple,* 25 Tenn. (6 Humph.) 113, 44 Am. Dec. 296; *Rogers* v. *McCoach,* 120 N. Y. S. 686. The rule is also recognized that a contract to pay a public officer for services rendered outside and not inconsistent with his official duty is enforceable. *Bronnenberg* v. *Coburn,* 110 Ind. 169, 11 N. E. 29; *Kinn* v. *First Nat. Bank,* 118 Wis. 537, 95 N. W. 969; *Studley* v. *Ballard,* 169 Mass. 295, 47 N. E. 1000. The court in the principal case rested its decision on the last-stated rule. It was said that "constables are not expected nor required to devote a considerable portion of their time to the work of their office," and that "the obligation is not incumbent upon the constable to give up his ordinary occupation and spend substantial time in search for evidence which may or may not lead to the detection of criminals." In *Kasling* v. *Morris,* 71 Tex. 584, 9 S. W. 739, the court reached the same conclusion on facts quite similar to those of the principal case. But in *Somerset Bank* v. *Edmund, supra,* not cited in the principal case, a different view was taken. So also in *Riley* v. *Grace,* and *Gilmore* v. *Lewis, supra,* the plaintiff, in the first case a town marshal and in the second a constable, sought out and discovered the criminal, and in both, the holding of the court was adverse to the officer's claim. Whether the principal case would be followed in all jurisdictions is, therefore, at least doubtful. A distinction has sometimes been made between the right of a public officer to take a reward from a private individual for the performance of his official duty, and his right to the reward when offered by a statute or public authority, some cases holding that in the latter situation he is entitled. *Porterfield* v. *State,* 92 Tenn. 289, 21 S. W. 519; *U. S.* v. *Matthews,* 173 U. S. 381; *McCain's Petition,* 4 Pa. Co. Ct. Rep. 9. But it cannot be said that this view has gained wide recognition. *Lees* v. *Colgan,* 120 Cal. 262, 52 Pac. 502.

MUNICIPAL CORPORATIONS—VALIDITY OF STATUTE REQUIRING PURCHASE OF WATER WORKS.—A state constitution provides that the legislature "shall not impose taxes for the purposes of any county, city, town or other municipality." The legislature passed an act requiring any city, before establishing its own water system in any neighboring town which it might annex, to purchase the property of the company then supplying the town. *Held,* that this statute was invalid, because violative of the above article of the constitution, since

the purchase of waterworks would make necessary the levy of a tax, and the legislature cannot do indirectly what it cannot do directly. *Kenton Water Co.* v. *City of Covington,* (Ky. 1913), 161 S. W. 988.

Apparently the only other reported case touching the exact point of the principal case is *Helena Consolidated Water Co.* v. *Steele,* 20 Mont. 1, 49 Pac. 382, 37 L. R. A. 412. In that case the constitutional provision was the same, and the statute provided that "no city having a water supply furnished by private parties * * * shall proceed to the erection * * * of a water plant to be operated by it, but in case the city shall desire to own and operate its water supply it shall acquire the plant already in operation as herein provided." It was left optional with the city whether or not it would establish its own system. This court held the statute invalid also because it was violative of the constitutional provision prohibiting the legislature from levying taxes upon the inhabitants or property of any municipality. Plaintiff's counsel in the principal case sought to distinguish the Montana case on the ground that the Montana court held that the furnishing of water to its inhabitants was done by the city in its private capacity, whereas in Kentucky the same act had been held to be governmental. The court denied the force of the distinction, saying, first, that the question whether the city in furnishing water was acting in a private or governmental capacity was not the controlling point of the Montana decision, and secondly, that the Kentucky doctrine was not as plaintiff assumed it to be, but just the reverse, namely that it is now settled law in Kentucky that the establishment of a water system in a city is a private, not a governmental, function. The situation presented by the Montana case, and the principal case must be distinguished from two others. First, where there is no constitutional limitation upon the legislature's power to impose taxes for municipal purposes, and no statute requiring the city to purchase an existing private plant, but only a contract entered into by the city and a private water company, binding the city to purchase the water system of the private company at the end of the latter's franchise; in such a case, the city may be held to its agreement, *National Water Works Co.* v. *Kansas City,* 62 Fed. 853, 10 C. C. A. 653, 27 L. R. A. 827. Secondly, where there is a statute similar to the one in the principal case, but no constitutional provision; here it is held that if the city elects to construct its public utility, it must purchase the company's plant, as provided by statute, *Newburyport Water Co.* v. *Newburyport,* 103 Fed. 584; *Citizens' Gas Light Co.* v. *Wakefield,* 161 Mass. 432, 37 N. E. 444, 31 L. R. A. 457. The principal case contains certain statements which are somewhat misleading. For example, speaking of plaintiff's contention that the authority of a city to construct a waterworks is purely a matter of legislative grant subject to be withdrawn or modified at any time, the writer of the decision uses this language: "There is no authority for the contention to the effect that the power of a municipality must come by way of legislative grant." This assertion is certainly too broad. That the power of a city to provide water for its inhabitants is not necessarily inherent, but depends upon a legislative grant of authority, general or special, express or implied, is well settled. *Huron Water Works Co.* v. *City of Huron,* 7 S. D. 9, 30 L. R. A. 484; *White* v. *Meadville,*

177 Pa. 643; *Matter of White Plains Water Com'rs,* 176 N. Y. 239; *Spaulding* v. *Peabody,* 153 Mass. 129; *Queens Co. Water Co.* v. *Monroe,* 83 N. Y. App. 105.

PROCESS—EXEMPTION FROM SERVICE OF NON-RESIDENT DEFENDANT.—The defendant, a resident of the state of Minnesota, had gone into the state of venue, without extradition, to answer the charge of embezzlement. After his discharge on bail but before leaving the court room he was served with a summons, complaint, and order for arrest, in a bail and arrest proceedings. He then filed a petition for a writ of habeas corpus which was denied in the lower court. *Affirmed* on the ground that the reason for the rule which exempts witnesses and parties to a civil suit from service of process in another action is not present here. The reason of the rule as given is that since such persons cannot be compelled to submit themselves to the civil jurisdiction of the courts of a foreign state, furtherance of justice requires that they should be privileged from service of process in order to secure their voluntary attendance. *Ex Parte Hendersen* (N. D. 1914), 145 N. W. 574.

The court in arriving at this decision follows what seems to be the weight of authority on a question of which the courts have taken opposite views. Of the contrary holding the following are the leading cases: *Murray* v. *Wilcox,* 122 Ia. 188, 97 N. W. 1087, 64 L. R. A. 534, 101 Am. St. Rep. 263; *Kaufman* v. *Gardner,* 173 Fed. 550; *Martin* v. *Bacon,* 76 Ark. 158; 6 A. & E. Ann. Cas. 336; *Moletor* v. *Sinned,* 76 Wis. 308, 7 L. R. A. 817, 20 Am. St. Rep. 71; *Hattabaugh* v. *Boynton,* 140 Wis. 89. Without exception the above cases rely on cases involving civil suits as authority for the proposition that the defendant should be exempt from service of process. Some of them recognize that other courts have drawn a distinction between civil and criminal actions, but refuse to consider the distinction as a valid one, either because as they say to do so would be to incorporate in the rule a refinement that was never intended, or that it would tend toward a corrupt use of the power of extradition. It would seem that the latter objection is overcome by the fact that a remedy is given by law for an abuse of the power of extradition. If the reason for the rule is that given in the instant case (and all the courts agree that such is the reason), then the result arrived at is undoubtedly correct, for in criminal cases where the power of extradition exists, the reason for the rule failing the rule itself has no application.

SALES—DELIVERY AS A CONDITION PRECEDENT TO PASSAGE OF TITLE.—Plaintiff sold coal to defendant, to be delivered "alongside" vendee's "dock at Syracuse, N. Y." When two canal-boat-loads of coal arrived at Syracuse, and approached to within 300 or 400 feet of vendee's dock, the boat captain notified vendee of their arrival, and an entry of the time of arrival and the quantity of coal was made in the books of the vendee. The boat could not be docked because other boats occupied the docks, and in accordance with traffic rules, the boats moved to the opposite side of the canal; by reason of a break in the canal and without fault of the vendor the coal was lost.